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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,693	04/25/2000	James D. McCarten		8544

7590 04/23/2002

Johnson & Stainbrook LLP  
3550 Round Barn Blvd  
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Santa Rosa, CA 95403

EXAMINER

TRAN A, PHI DIEU N

ART UNIT PAPER NUMBER

3637

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/557,693

Applicant(s)

MCCARTEN, JAMES D.

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 12, 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The new limitation “means for erecting the dome structures in courses utilizing an overhead hoist” is indefinite. It is unclear whether applicant is trying to claim “the means” or “the means with the dome structures and the hoist”.

Claim is examined as best understood with the module having the means.

Claims 19-20 “substantially pentagonal or substantially hexagonal” is indefinite. A structural is either pentagonal or hexagonal but not “substantially” hexagonal or pentagonal.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- I. Claims 12-16, 20-21, 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mellott.

Mellott (figures 1-3) shows a polygonal member having a center, an exterior surface, an interior surface, a plurality of sides (22), a lower edge, a plurality of faces (28) each one of which

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has an outer edge intersecting one of said sides and inclines upwardly from said side to converge at substantially the center of said polygonal member, a means comprising a center connector(12) affixed to said center of said polygonal member, said connector having a center connecting bolt (36), a center connecting washer (32) positioned over said center connecting bolt, said center connecting bolt depending downwardly from said interior surface of said module when the module is laid flat on its lower edge, connection means (40) being a plurality of bolts (40) and complementary nuts (42), each of said sides having at least one aperture (52, 48) for insertion of said bolts, said center connector bolt being integrally formed into said polygonal member, the polygonal member being hexagonal, a disc member (34) being substantially circular and concentric with the center connector washer, said disc having a convex and a concave side, said convex side being in approximation with the interior surface of said module.

I. Claims 1, 4-5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Petty or Preissler.

II. Claims 12, 14, 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Dubinsky.

Dubinsky (figures 1,5,7,9-10) shows a module having a polygonal member having a center, an exterior surface, an interior surface, a plurality of sides, a lower edge, a plurality of faces each one of which has an outer edge intersecting one of said sides and inclined upwardly from said sides to converge at the center, means comprising a center connector having a center connecting bolt (figure 9), a center connecting washer(figure 9, its mating part) positioned over said center connecting bolt, said center connecting bolt depending downwardly from said interior surface of said module when said module is laid flat on its lower edge, connection means,

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(70,72), a disc member (82) being substantially circular and concentric with center connector washer, said disc having a convex and a concave side, said convex side in approximation with the interior surface of said module (60), the disc member having a circumference engaging the sides of the modules.

*Claim Rejections - 35 USC § 103*

III. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

IV. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mellott.

Mellott shows all the claimed limitations except for the polygonal member module being pentagonal.

It would have been obvious to one having ordinary skill in the art to modify Mellott to show the polygonal member module being pentagonal because hexagonal, pentagonal, decagonal, rectangular are all well-known shapes for a panel module.

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V. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dubinsky in view of Feldman.

Dubinsky shows all the claimed limitations except for the disc being made from polarized transparent material.

Feldman shows a disc being made from polarized transparent material.

It would have been obvious to one having ordinary skill in the art to modify Dubinsky to show the disc being made from polarized transparent material because it would enhance the viewing areas of Dubinsky's structure.

#### ***Response to Arguments***

3. Applicant's arguments filed 1/18/02 to claims 14-23 have been fully considered but they are not persuasive.

4. With respect to the limitation "means for" in claim 12, applicant is claiming a module and the means comprising a connector. Mellot, Petty, Preissler, or Dubinski each shows all the claimed limitations of claim 12 including the "means". With respect to applicant's argument that the structures of the reference cannot possibly function as a way for erecting the dome structure utilizing an overhead hoist, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The means of the references (mellot, Petty, Preissler, or Dubinski" can certainly be **adapted** to function as claimed.

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With respect to applicant's assertion that there is no motivation to modify the references to show the instant invention **as newly claimed**, the argument is moot as the new claims are still rejectable with the existing references and the original rejections.

*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A  
April 18, 2002

PA

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

*Lanna Mai*